

IN THE SENATE OF THE UNITED STATES.

APRIL 19, 1858.—Ordered to be printed.

Mr. MASON made the following

**REPORT.**

[To accompany Bill S. 273.]

*The Committee on Foreign Relations, to whom was referred the report from the Court of Claims in the case of the "claimants of the brig General Armstrong, against the United States," have had the same under consideration, and now report:*

That at the first session of the thirty-third Congress the Committee on Foreign relations of the Senate, to whom the petition was referred, made a report, accompanied by a bill for the relief of the petitioners, (report No. 157, Senate bill 268.) The case was subsequently referred to the Court of Claims, both by the Senate and House of Representatives.

The case now comes before this committee on the report of the Court of Claims, (Mis. Doc. No. 142, 1st session 35th Congress.) On examination of this report it appears that, at the first hearing, that Court sustained the claim of the petitioners as valid against the government, and directed that evidence should be taken to show the amount due, one of the judges dissenting.

On a further hearing of the case on such evidence, one of the judges, theretofore in the majority, reconsidered and reversed his opinion, and judgment was then rendered adversely to the claim—the ground then assumed being, that on the proofs no claim in law was established against the United States, and that the claim could be addressed only to the liberality and equity of Congress.

On examination of this report from the Court of Claims, it would appear that the Court assumed that certain proofs had been laid by the government of the United States before the arbitrator, which might materially have affected his award, but which it now clearly appears was a mistake, and that the proofs in question were not before him when the award was made.

The facts appear to be these: By the convention with Portugal, pursuant to which this claim was referred to the arbitrament of the republic of France, it was stipulated that all the correspondence between the government of Portugal and the United States respecting this claim should, by the parties to the treaty, be laid before the arbitrator. In doing this it further appears that, by some misapprehension, a part of this correspondence, being that which first arose

in the years 1814-'15, and conducted at Rio de Janeiro, (where the government of Portugal then resided,) was omitted, and in which the last named government admitted, by necessary implication, its liability to the claimants.

It is now shown that the evidence of such omission had been communicated by the Secretary of State to the solicitor of the Court of Claims prior to the judgment of that Court in the case, but for some reason had not been laid before the Court; whilst both the existence of such proofs and the omission to adduce them before the arbitrator was necessarily unknown to the claimants, nor were these facts discovered until after the decision of the Court.

In proof of this, the committee append to this report a copy of the letter of Mr. Marcy to Mr. Blair, solicitor of the Court of Claims, dated 20th November, 1855, with the papers accompanying it. There is a descriptive list of the correspondence that was laid before the arbitrator, and this correspondence of 1814 and 1815 is not amongst them.

It was contended in the argument on the part of the government that, even conceding that this last named correspondence was not before the arbitrator, still no injury could have resulted to the claimants, because all the material facts contained in it were referred to or otherwise cited in so much of the correspondence as was exhibited. Still, the committee are of opinion that the failure to exhibit it, as required by the convention, is a matter of just complaint by the claimants, because, amongst other reasons, it cannot be known what inferences or conclusions might be drawn by the arbitrator by reason of its absence.

Nor do the committee mean to say that, had that evidence been before the Court, it would have made a clear case of demand in law against the government; but they advert to it as a further equitable consideration in favor of the claimants.

On the whole, the committee, on further examination, again concur in their report, before adverted to, of March 10, 1854, in favor of this claim, and make the same a part of this report; and on the proofs as to the amount due, established before the Court of Claims, and set forth in its report, pages 149 and 150, report a bill for the relief of the claimants.

The proofs before the Court of Claims show:

The value of the vessel at.....	\$43,000
Loss of officers and men.....	27,739
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	70,739
From which is deducted—	
Amount paid heretofore as prize money to officers and men..	10,000
	<hr/>
	60,739
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## UNITED STATES OF AMERICA.

## DEPARTMENT OF STATE.

*To all to whom these presents shall come, greeting :*

I certify that the papers hereunto annexed are true copies from the records and of the archives of this department.

In testimony whereof, I, Lewis Cass, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the city of [L. s.] Washington, this 29th day of January, A. D. 1858, and of the independence of the United States of America the 82d.

LEWIS CASS.

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*Mr. Marcy to Mr. Blair.*

DEPARTMENT OF STATE,  
Washington, November 20, 1855.

SIR : I have to acknowledge the receipt of your letter of yesterday, relative to the claim in the case of the "General Armstrong;" and with a view to enable you to repel the statement that the correspondence upon the subject was not duly laid before the arbiter, an extract from a despatch of Mr. Rives to this department, and a copy of the papers to which it refers, is herewith enclosed.

I am, sir, very respectfully, your obedient servant,

W. L. MARCY.

M. BLAIR, Esq.,

*Solicitor of the Court of Claims, Washington.*

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*Mr. Rives to Mr. Webster.*

[Extract.]

No. 141.]

LEGATION OF THE UNITED STATES,  
Paris, April 7, 1852.

SIR : In my despatch No. 132 I mentioned to you that the correspondence between the government of the United States and that of Portugal, on the subject of the reclamation in the case of the privateer brig "General Armstrong," had been forwarded from Lisbon to the Portuguese minister here for the purpose of being laid by the representatives of both governments before the president of the French republic as arbiter in pursuance of the convention of February 26, 1851. The minister of Portugal retained the correspondence in his possession till about a fortnight ago, in order to enable him to complete the copy and translation he wished to make. He then commu-

nicated it to me, and as I had never had an opportunity of making myself acquainted with the merits of the question, I retained the correspondence long enough to enable me to read the whole of it with attention, so that I might be in a position to give explanations, if any should be called for in the progress of the arbitration. Having completed the perusal of the papers, and finding them all duly authenticated by the signature of Mr. Haddock, chargé d'affaires of the United States at Lisbon, with that of the person empowered to do so on behalf of the Portuguese government, I proceeded, under the instructions heretofore given by the Department of State, and in conjunction with Count Azanhaga, the Portuguese minister here, to communicate them to the minister of foreign affairs, to be laid before the president of the French republic, as arbiter chosen by the two governments. A copy of the note addressed by me to the minister of foreign affairs is herewith enclosed. A note of the same tenor was, at the same time, addressed to the minister of foreign affairs by Count Azanhaga. I enclose also a copy of the list of papers communicated, as made out at Lisbon, and signed by Mr. Haddock and the Portuguese minister of foreign affairs. \* \* \* \* \*

I have the honor to be, &c.,

W. C. RIVES.

Hon. DANIEL WEBSTER,  
*Secretary of State.*

LEGATION DES ETATS UNIS,  
*Paris, April 3, 1852.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor, in conjunction with the Comte Azanhaga, envoy extraordinary and minister plenipotentiary of her most faithful majesty the Queen of Portugal, to communicate herewith to his excellency the Marquis de Turgot, minister of foreign affairs, the accompanying series of papers, duly authenticated and regularly numbered, from 1 to 21, being the correspondence which has passed between their respective governments on the subject of the reclamation in the case of the American privateer brig the "General Armstrong."

The two contracting parties having engaged, by the third article of the convention entered into between them on the 26th day of February, 1851, to lay this correspondence before the arbiter who should be chosen by them to decide the claim in question, and the prince president of the French republic having been pleased to accept the office of arbiter, conferred upon him by the choice of both parties, the accompanying papers are now communicated, in pursuance of the said convention, to be laid before him for his consideration and decision on the matter in controversy.

The undersigned prays his excellency the minister of foreign affairs to accept the renewed assurances of his most distinguished consideration.

W. C. RIVES.

His Excellency le MARQUIS DE TURGOT,  
*Minister of Foreign Affairs.*

*Correspondencia havide entre o Ministro dos Negocios Estrangerios de S. M. F. so representante dos Unidos d' America sin Liebor acerca or reclamacio do corsario "General Armstrong."*

- No. 1.—Note de Mr. Kavanagh de 17 de Fevereiro, de 1837, com trez documentoz, A, B, C.
- No. 2.—Note de Mr. Washington Barrow, de 25 de Mais, de 1842.
- No. 3.—Note de Mr. Washington Barrow, de 10 d' Outubro, de 1842, com trez documentoz, A, B, C.
- No. 4.—Note de Ministro dos Negocios Estrangerios, de 3d Agosto, 1843.
- No. 5.—Note de Mr. Hopkins, de 28 de Julho, de 1847.
- No. 6.—Note de Ministro dos Negocios Estrangerios de 29 de Setembro, de 1847, e un documento.
- No. 7.—Note de Mr. James B. Clay, de 2 de Novembro, de 1847.
- No. 8.—Note dos Negocios Estrangerios, de 9 de Marco, de 1850.
- No. 9.—Note de Mr. Clay, de 15 de Marco, de 1850.
- No. 10.—Note de Ministro do Negocios Estrangerios, de 15 d' Abril, de 1850.
- No. 11.—Note de Mr. Clay, de 24 d' Abril, de 1850.
- No. 12.—Note de Ministro do Negocios Estrangerios, de 15 de Mais, de 1850.
- No. 13.—Note de Mr. Clay, de 16 de Mais, de 1850.
- No. 14.—Extracto du note de Mr. Clay, de 21 Junho, de 1850.
- No. 15.—Note de Ministro dos Negocios Estrangerios, de 2 Julho, 1850.
- No. 16.—Extracto du note de Mr. Clay, de 2 de Julho, de 1850.
- No. 17.—Extracto du note de Ministro dos Negocios Estrangerios, de 6 de Julho, 1850.
- No. 18.—Extracto du note de Mr. Clay, de 7 de Julho, de 1850.
- No. 19.—Extracto du note de Ministro dos Negocios Estrangerios, de 10 de Julho, de 1850.
- No. 20.—Note de Mr. Clay, de 11 de Julho, de 1850.
- No. 21.—Note de Ministro dos Negocios Estrangerios, de 13 de Julho, 1850.

EMILIO ACHILLES MONTENERDE,  
*Secretario d' Estado dos Negocios Estrangerios um 7 de Janeiro, de 1852.*

CHARLES B. HADDOCK,  
*Chargé d' Affaires of the United States of America.*

IN THE SENATE OF THE UNITED STATES, *March* 10, 1854.

Mr. SLIDELL made the following report, to accompany bill S. 268.

*The Committee on Foreign Relations, to whom was referred the memorial of Sam. C. Reid, jr., in behalf the claimants in the case of the brig General Armstrong, praying indemnity, respectfully submit the following report :*

As appears by the official documents accompanying the memorial, the facts of this case are as follows : On the 26th and 27th of Septem-



ber, 1814, the American private armed brig General Armstrong, commanded by Captain Samuel C. Reid, while at anchor in the neutral port of Fayal, belonging to the dominions of Portugal, was attacked by the gun-boats of a large British squadron, commanded by Captain Lloyd, in violation of the laws of neutrality. The squadron consisted of his Britannic majesty's vessels, the ship-of-the-line *Platagenet*, of 74 guns, the frigate *Rota*, of 44 guns, and the brig *Carnation*, of 18 guns. The General Armstrong carried but seven guns and ninety men. After a defence unparalleled in the history of naval warfare, the Americans sustained a loss of but two killed and seven wounded, while the loss in killed and wounded on the part of the enemy was between two and three hundred. The squadron was detained ten days at Fayal in repairing damages. They were occupied three days in burying their dead. The sloops-of-war, the *Thais* and *Calypso*, which arrived a few days afterwards, were taken into requisition to carry home the wounded men. The latter sailed for England on the 2d, and the former on the 4th of October, 1814.

On the representations afterwards made of the facts of this case by the Portuguese governor of Fayal to his government, expressly charging the violation of the neutrality of this port and the destruction of the American brig by the British commander, the prince regent of Portugal, on the 22d December, 1814, instructed his minister at London to demand an apology and indemnification from the English government for the outrage committed. The Marquis de Aguiar, the minister of foreign affairs of Portugal, in compliance with orders received from the prince regent, addressed a note to Mr. Sumpter, the American minister at Rio de Janeiro, dated 23d December, 1814, informing him of the circumstances, and stated that, "not a moment's delay ensued in causing to be addressed to the British minister at this court the note which is confidentially communicated by a copy to your lordship, at the same time that he has directed his minister in London to make the reclamation so serious an offence requires." The letter alluded to, addressed to Lord Strangford, minister plenipotentiary of Great Britain, is dated Palace of Rio Janeiro, December 22, 1814, and holds this language: "His royal highness, at the same time that he has directed his minister at the court of London to make the strongest representations before the prince regent of the United kingdom of Great Britain, and require satisfaction and indemnification, not only for his subjects, but for the American privateer, whose security was guaranteed by the safeguard of a neutral port, orders it to be signified to his excellency Lord Strangford, that he may inform his government of the unfavorable impression which the conduct of that British commander has caused in the mind of his royal highness," &c.

On the 3d January, 1815, Mr. Madison, President of the United States, not being aware that Portugal had voluntarily admitted her liability to this government, caused Mr. Monroe, the Secretary of State, to make a formal demand on Portugal for the destruction of the brig General Armstrong, based upon the sworn protest of Captain Reid and nine of his officers, made before John B. Dabney, United States consul at Fayal. Mr. Monroe, in his letter of instructions to Mr. Sumpter, our minister at Rio de Janeiro, held this language: "The growing fre-

quency of similar outrages on the part of Great Britain, renders it more than ever necessary for the government of the United States to exact from nations in amity with them a rigid fulfilment of all the obligations which a neutral character imposes." "You are requested to bring all the circumstances of the transaction distinctly to the view of the Portuguese government, and to state the claim which the injured party has to immediate indemnification."

No satisfaction or reply having been received from Portugal to this communication, the claimants in January, 1817, brought their claim before Congress. The Naval Committee of the Senate, to whom it was referred, in denying the right of the claimants at that time to be indemnified by their own government for the loss sustained, expressly charged the breach of neutrality on the government of England, asserted the responsibility of Portugal to the claimants, and declared it to be the duty of this government to seek redress for the claimants, "by such means as it may deem expedient."

In 1818, on the 14th March, Mr. John Q. Adams, Secretary of State, under Mr. Monroe, in a letter to the Portuguese minister at Washington, the Chevalier Corrêa de Serra, calling his particular attention to this claim, said: "Of the facts in this case there is, and can be, no question, having been ascertained not only by the statements of the injured parties, but by the official reports of your own commanding officer. It is hoped your government will, without further delay, grant to the sufferers by that transaction the full indemnity to which they are by the laws of nations entitled." It is here proper to state that on the demand made by Portugal for indemnification and satisfaction, England promptly replied by an apology, and made reparation for the loss of Portuguese property, occasioned by the firing of the British vessels, but refused to pay the claim preferred and demanded for the destruction of the brig General Armstrong.

From Mr. Monroe's administration up to the early part of the second term of General Jackson, a period of sixteen years, it appears that this claim became neglected and wholly overlooked by both governments. In the mean time the house of Braganza had removed from Rio de Janeiro to Lisbon. On 2d June, 1834, Mr. Louis McLane, Secretary of State, informed Captain Reid that "the situation of Portugal is such as to render the present an unsuitable time for presenting any claim, however just, upon the government. When the political affairs of that country become settled your memorial will receive proper attention."

Mr. Dickens, of the Department of State, in his letter of instructions to Mr. Cavanagh, dated May 20, 1835, said: "The Portuguese authorities at that place having failed to afford to this vessel the protection to which she was entitled in a friendly port, which she had entered as an asylum, the government is unquestionably bound by the law of nations to make good to the sufferers all the damages sustained in consequence of the neglect of so obvious and acknowledged a duty."

On the 14th of April, 1840, Mr. John Forsyth, Secretary of State under Mr. Van Buren, in reply to the claimants, said that "Mr. Cavanagh's instructions (United States chargé at Lisbon) require him

to urge the call upon Portugal whenever there is room for expecting a favorable result."

Under Mr. Tyler's administration Mr. Webster, at the solicitation of the claimants, renewed this demand, and a reply in writing was received from the Portuguese minister, Señor de Castro. In this communication, dated 3d August, 1843, addressed to Mr. G. W. Barrow, chargé d'affaires of the United States at Lisbon, the liability of Portugal was for the first time denied, and it was boldly asserted that the Americans, and not the British, had first violated the neutrality of their port. This was the only written reply ever received from the government of Portugal, since the communication of the Marquis de Aguiar, a period of nearly thirty years.

Under the administration of General Taylor, negotiations with Portugal were renewed. Mr. John M. Clayton, Secretary of State, in his instructions, dated April 20, 1849, to Mr. G. W. Hopkins, chargé d'affaires of the United States at Lisbon, in speaking of the Armstrong claim as "the oldest case of wrong, and the most remarkable," and in alluding to the wrongs and grievances so long borne by our countrymen, says: "It is under these circumstances that the President has resolved to make one more attempt to procure satisfaction for American claimants, and to assert the national honor. You will impress upon Portugal this idea, that, on entering upon the duties of his high office as Chief Magistrate of the United States, the President determined that he would assert the rights of his fellow-citizens upon foreign governments; proceeding upon the principle, often avowed by our government, 'to make no demand not founded in justice, and to submit to no wrong.' Further delay will be construed into denial. It is in contemplation to lay before Congress the result of this final appeal, at an early period of the next session. Should it happen, unfortunately, that a satisfactory answer be denied, or withheld, until the arrival of the period for making the proposed communication, the subject will then be submitted to that body as it shall at the time stand; and the Portuguese government may rest assured that any measures which Congress in their wisdom may decide upon, as due to our citizens and country, will be faithfully carried out by the Executive." In carrying out these instructions, Mr. Hopkins, in his letter, dated Lisbon, June 28, 1849, to Count Tojal, the Portuguese minister of foreign affairs, says: "The President of the United States sincerely desires to cultivate peace with every nation and people, but he will never compromise the dignity of the republic, nor abandon the just rights of his fellow-citizens to attain any end."

Mr. James B. Clay, who succeeded Mr. Hopkins, continued the negotiation, and in his letter of the 24th April, 1850, peremptorily refused to accept the proposition of Count Tojal to refer the case of the General Armstrong to the arbitration of a third power. In the final instructions sent to Mr. Clay by the Department of State, dated March 8, 1850, a peremptory demand was made on the Portuguese government, and twenty days allowed for a final reply. These instructions were sent to the commander of the American squadron in the Mediterranean, to be delivered to Mr. Clay, and the demand was backed by the presence of the American fleet in the river Tagus. In



these instructions Mr. Clayton says: "In regard to a reference of our claims to an arbiter, which has been indicated, the President has directed me to say that no such course will, under the circumstances, receive his sanction, and this for reasons too obvious to need enumeration."

The letter of Count Tojal to Mr. Hopkins, dated Lisbon, September 29, 1849, states that "it is well known that the British government had already, in 1817, disapproved of the conduct of Commodore Lloyd, thereby giving satisfaction to his Majesty's government, and that it had, in March, 1818, made compensation for the losses occasioned to the inhabitants of Fayal by the artillery of the British forces, while absolutely refusing indemnity for the loss of the American privateer, on the grounds of her having been the first aggressor, and therefore the cause of her own destruction." Furthermore, Count Tojal states in his letter of March 9, 1850, to Mr. Clay, that, "In 1814, the government of her Britannic Majesty, through Lord Bathurst, then minister of foreign affairs, directed Mr. Canning, ambassador at Lisbon near the regency, to give the Portuguese government a verbal satisfaction for the occurrences which had taken place, and which resulted in the destruction of the privateer General Armstrong, in the port of Fayal," &c. And finally, that, "in 1817, Lord Castlereagh, who was then minister of foreign affairs to her Britannic Majesty, sent the sum of £319 to the inhabitants of the village Da Horta, as a compensation for the damage which the balls of the brig Carnation had caused to their dwellings," &c. On Mr. Clay afterwards quoting these facts as conclusive evidence, both against the Portuguese and British governments, Count Tojal replies in his letter of May 15, 1850, that "the English government does not consider the conduct of Commodore Lloyd as amenable to censure; that upon being informed of its having been asserted, in the course of this correspondence, that Commodore Lloyd had been reprimanded by the government of his Britannic Majesty, on account of his conduct in the affair of the privateer General Armstrong, an official communication was sent, a few days ago, to the government of her most faithful Majesty, stating that the assertions in regard to such censure were entirely destitute of foundation." It is worthy of remark that the Portuguese government studiously concealed the diplomatic correspondence with England in regard to this whole transaction, although requested to exhibit it by Mr. Clay.

The government of Portugal, thus supported, aided and encouraged by the government of England, continued to resist the payment of this claim, while she willingly admitted others of unequal justice and merit. Under these circumstances, on the 11th July, 1850, Mr. Clay, according to instructions, demanded his passports and left the country. In the meantime the Portuguese minister at Washington, J. C. de Figueirêdo e Morão, had opened a correspondence with the Secretary of State in relation to the Armstrong claim, urging a reference of the claim to a third power. Mr. Clayton rejected the proposition, and in his letter of the 30th April, 1850, says: "The undersigned, in conclusion, is compelled to add, that should the Portuguese government persevere in the refusal to adjust and settle what are believed to be the incontrovertible claims of American citizens upon that government, the only alternative

left to the President will be immediately resorted to—the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment will have all its appropriate influence upon the course of the Executive.” Again, on the 19th June, 1850, Mr. Clayton, in reply to Mr. Figanière’s reclamations on this government, as a set-off against this and other claims, says: “In conclusion, sir, I beg leave to repeat to you the assurance contained in my note of the 30th May last, ‘that the just claims of the citizens of this country upon Portugal will lose none of the merit which characterizes them, nor any portion of that protection which this government has determined to extend to the claimants, by the resuscitation of such unfounded pretensions.’”

At this critical juncture, on the 9th of July, 1850, President Taylor died. On the formation of the new administration under Mr. Fillmore, the proposition of Portugal to submit this claim to a third power for arbitration was renewed, accepted, and agreed to by this government, without the knowledge, advice, or consent of the memorialist, or any of the claimants. A treaty was concluded on the 26th February, 1851, and ratified by the Senate on the 10th March. This treaty was proclaimed on the 1st September, 1851. Louis Napoleon, president of the republic of France, was chosen as arbitrator. The claimants then submitted to the Department of State, and filed a written argument, with the request that it should be transmitted to the arbitrator chosen by the high contracting parties. The Secretary of State, Mr. Webster, refused the application, on the ground that the terms of the treaty did not permit of it, and the claimants were deprived of the privilege, and debarred of the benefit of being heard, through their counsel and agent, in support of their demand. More than one year was permitted to elapse before any decision was made. The “prince president” had, in the meantime, become emperor of France. On the 29th November, 1852, Mr. Rives, our minister at Paris, was informed by the French minister of foreign affairs, Mr. Drouyn de L’huys, that the arbitral decision of the prince president had just been rendered, and he would be immediately invited to wait on the prince president to receive the decision. On the 10th December, 1852, the French minister informs Mr. Rives that, “circumstances not having permitted the ‘emperor’ to invite you to wait on him, he has done me the honor of deputing me to deliver, in his name, to the representatives of the two nations interested in the matter, the two documents destined for their respective governments.” Mr. Rives, in his letter to Mr. Everett, Secretary of State, dated Paris, December 13, 1852, discloses the particulars of the formalities of receiving the award, and states, in conclusion, that “It may not be improper for me to add, that I never received, from any quarter, any intimation of the nature of the decision rendered; nor did the minister of foreign affairs, in the interview above mentioned, make the slightest allusion to its bearing on the one side or the other. He only said, in general terms, that the president had examined the whole subject with great care and attention, and with an earnest desire to render justice to the parties, according to the facts and principles involved in the controversy.”

It is evident from the letter of Mr. Rives that he never was consulted

or advised with in regard to the rights of the claimants, nor was he invited or permitted at any time to appear before the "prince president," or "emperor of France," to make any statement or explain any fact or argument in behalf of the claimants in this arbitration.

Having thus narrated the facts of the case, the committee will now proceed briefly to state the views which have led them to the conclusion that the memorialists are entitled to relief. It is certain that, by a gross violation of the law of nations, the General Armstrong was attacked and destroyed in the neutral harbor of Fayal by a British squadron. That the outrage was, immediately after its occurrence, and when the facts were all fresh in the recollection of the authorities and inhabitants of Fayal who had witnessed it, made the ground of earnest and indignant remonstrance by the government of Portugal to that of Great Britain, that it was admitted and apologized for by the latter, and compensation made to such Portuguese subjects as had suffered by the collision. It appears to be conceded on all hands that the tolerance by a neutral of such a violation of its territory, renders it responsible to the government whose citizens have suffered by it, not only for apology and explanation, but for pecuniary indemnity. That such claim was made by the United States, and urged for many years on Portugal; that its justice has been considered indisputable by all administrations; that even it was on one occasion intimated that it would, if denied, be enforced by arms. That after many delays and evasions Portugal offered to refer the claim to the arbitrament of a third power; that this offer was peremptorily rejected; that afterwards being renewed, accompanied by the bonus of a promise to pay the full amount of all other reclamations made by the United States, it was accepted without notice to, or consultation of any kind with, the claimants, who, when it had once been rejected, had a right to presume that it would not be acceded to without their assent, and that they were not allowed the privilege of submitting an argument in the case. While a government is the sole judge of the circumstances under which a resort to arms should be had to secure reparation for injuries done to their citizens, and may abstain from a further prosecution of them, yet a manifest distinction exists between this right of abstinence and that of reference to arbitration. This power may be discreetly and rightfully exercised where various and complicated causes of complaint exist, and where the adjustment of none can be obtained without the submission of all to reference; and the citizen as to whom the decision may be unfavorable, although his claim be just, would probably have no valid equitable ground of recourse against his government.

The case of the General Armstrong was distinct and isolated, no other interests were hanging upon its decision, and if the administration of President Fillmore did not choose to urge it further, it might, and in the opinion of this committee, should have been left for future settlement. Numerous instances in our own history during the last thirty years, to which it is not necessary to refer, demonstrate the efficacy of time in bringing about the solution of difficulties apparently insurmountable.

The committee, while indisposed to speak in any other terms than those of unqualified respect of the judgment and impartiality of the

arbitrer to whom the case was referred, think that there is a manifest error in his statement of facts and the conclusion drawn from his statement in the final award. He says: "Considering that if it be clear that on the night of the 27th of September, some English long boats, commanded by Lieutenant Robert Fausset, of the British navy, approached the American brig the 'General Armstrong,' it is not certain that the men who manned the boats aforesaid were provided with arms and ammunition. That it is evident, in fact, from the documents which have been exhibited, that the aforesaid long-boats having approached the American brig, the crew of the latter, after having hailed them and summoned them to be off, immediately fired upon them, and that some men were killed on board of the English boats and others wounded—some of whom mortally—without any attempt having been made on the part of the other boats to repel at once force by force."

Now, it is evident that the natural, indeed, necessary presumption is, that the boats of men-of-war do not, at night, closely approach an armed vessel of an enemy without the crew being armed—those who assume the negative in such a case should prove it—but no stronger evidence can be required of the facts of the crews of the British boats being armed, than that a seaman of the "General Armstrong" was killed and her first lieutenant wounded in the first contest. Under all the peculiar circumstances of the case, the committee are of opinion that the claimants are justly entitled to relief on strict legal principles, and even were their convictions on the subject less decided than they are, they would find in the heroic conduct of Captain Reid and his gallant crew strong inducements to give them the benefit of their doubts.

There are two points of general interest involved in this matter, which should not be without their influence on the action of the Senate. The effect to be produced on our own citizens by according indemnity in stimulating them to emulate the noble example of Captain Reid; for there can be no doubt that if he had suffered himself to be captured without resistance, full pecuniary satisfaction would long since have been accorded by Portugal to the claimants. Shall we refuse it because he has added to our naval history one of its most brilliant pages? Again, if we act upon the avowed principle that our citizens are always to be compensated for any injuries they may suffer from the violation by belligerents of the law of nations, other countries will be more earnest in maintaining the inviolability of their territory.

The committee report the accompanying bill and recommend its passage.